

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

266

**BRIEF FOR STEWART L. UDALL, SECRETARY OF THE
INTERIOR, APPELLEE**

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,907

C. F. PRUESS, SR., EXECUTOR, ET AL., APPELLANTS

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR, APPELLEE

*APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA*

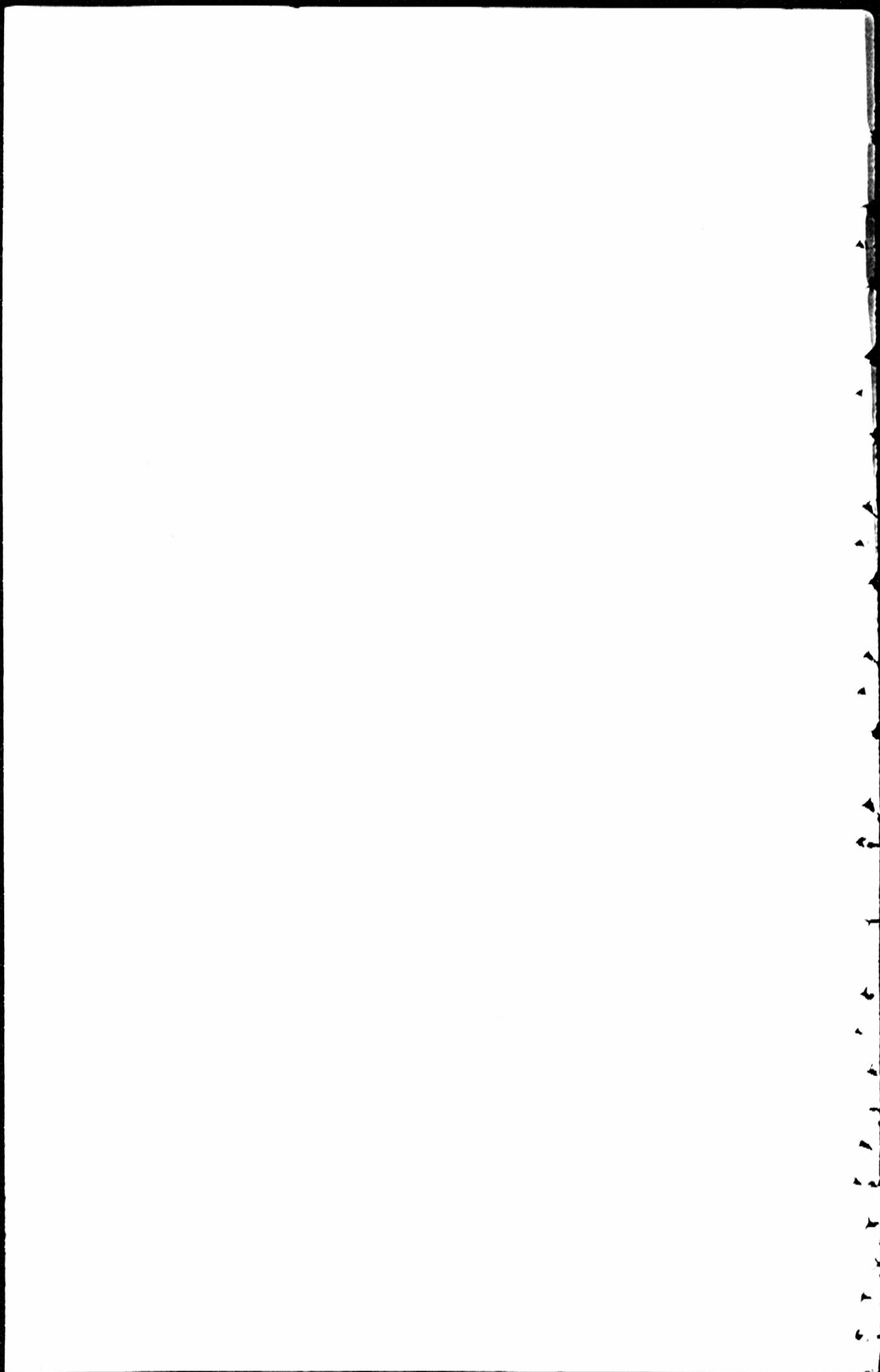
United States Court of Appeals
for the District of Columbia Circuit

RAMSEY CLARK,
Assistant Attorney General.

FILED DEC 7 1964

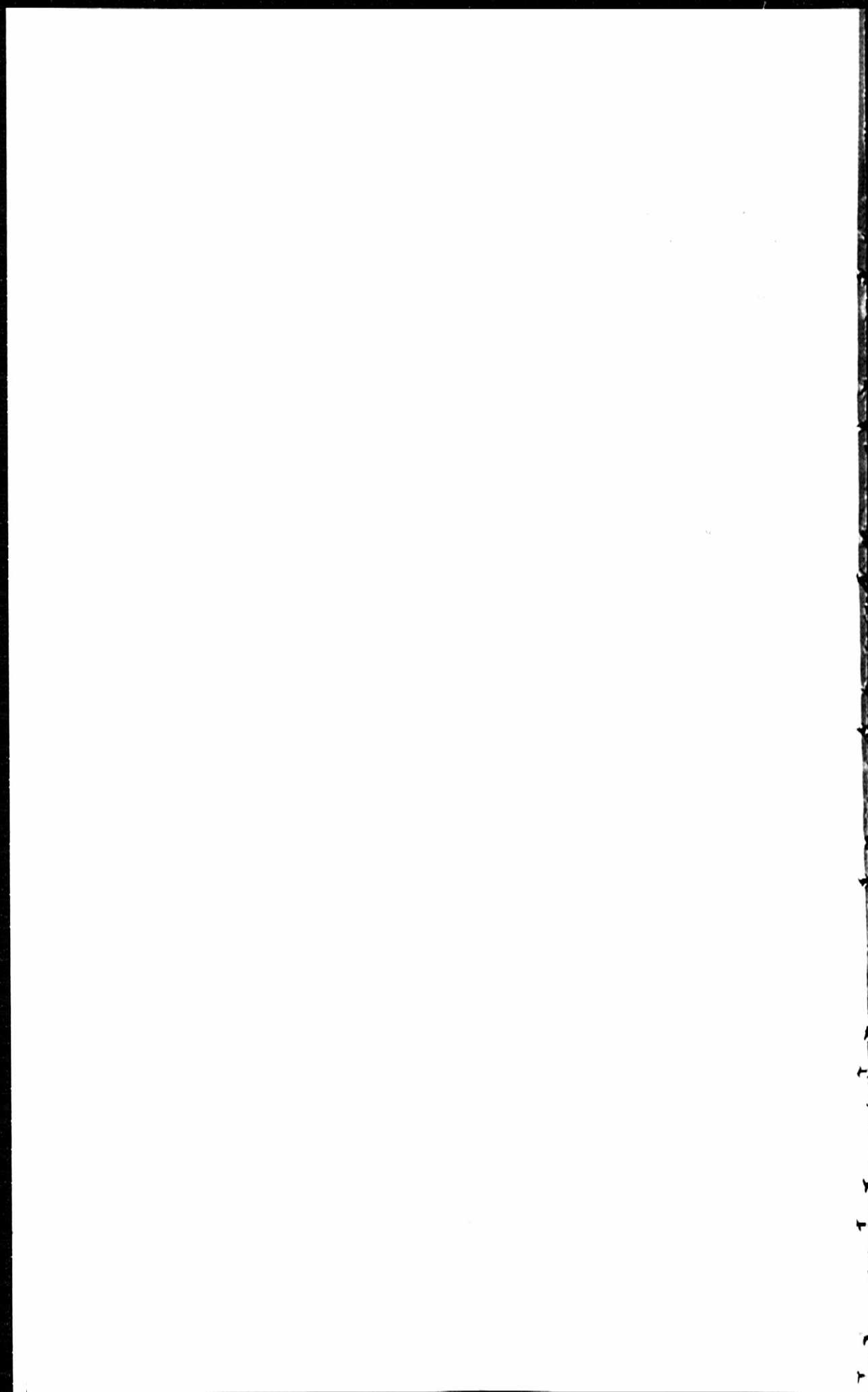
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QUESTION PRESENTED

Whether the district court erred in finding that there was substantial evidence to support the conclusion of the Secretary of the Interior that the appellants' mining claims were null and void.



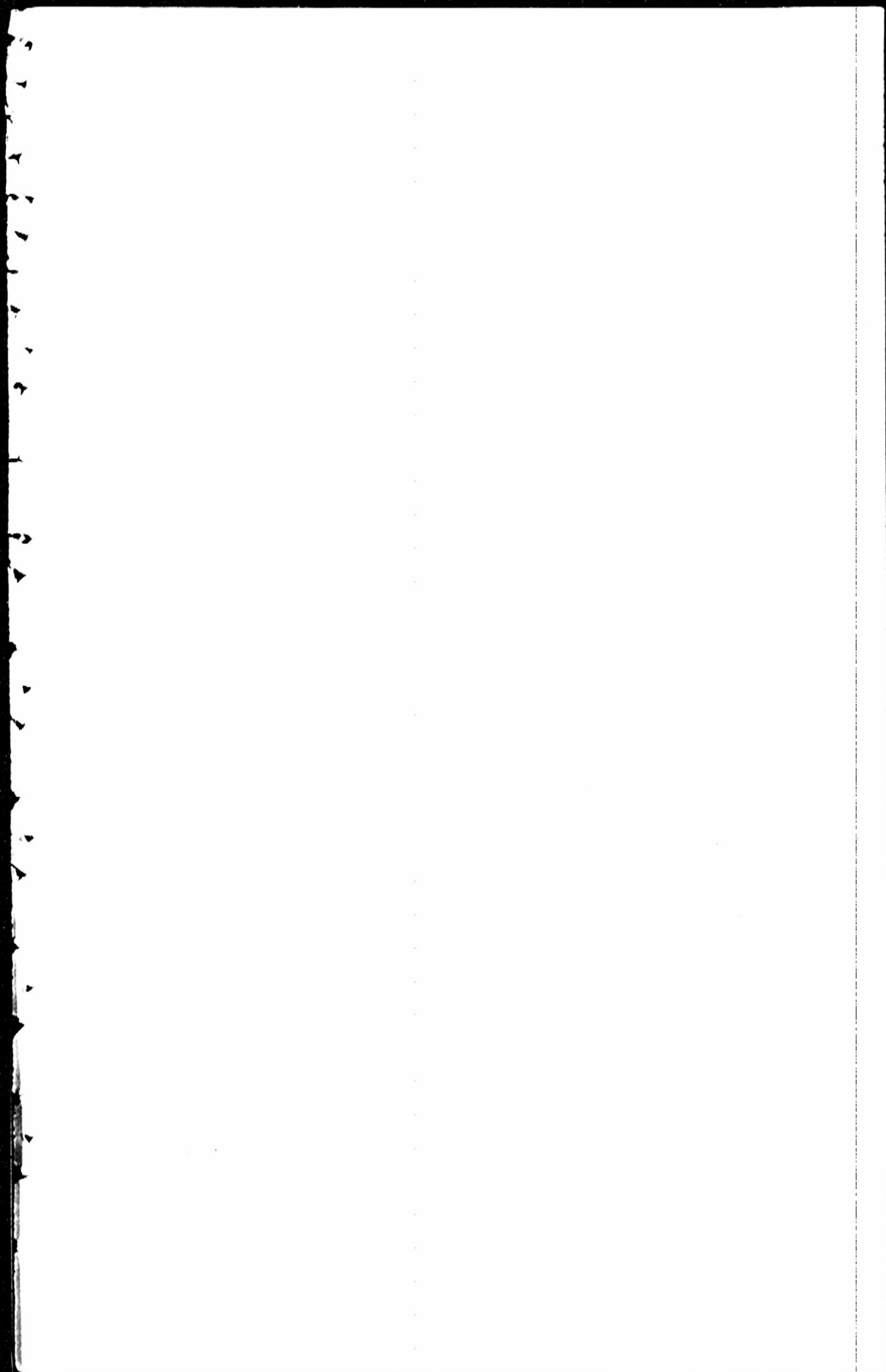
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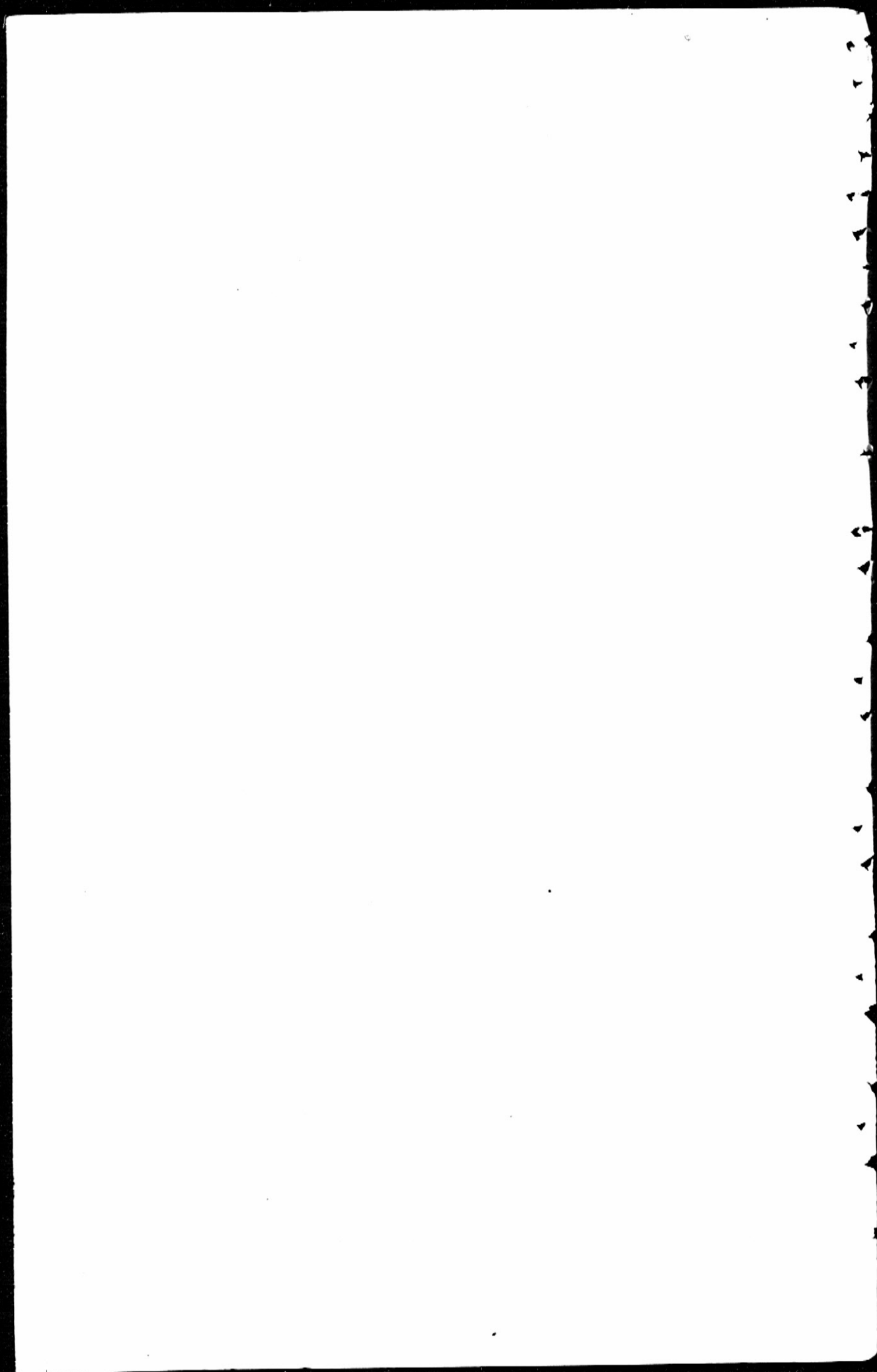
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OPINIONS BELOW

The district court did not write an opinion. Its judgment dismissing the complaint and findings of fact and conclusions of law is contained in the Appendix to this brief, pp. 50, 51. The administrative decisions of the Hearing Examiner, the Acting Director of the Bureau of Land Management and a Deputy Solicitor of the Department are set out in the Appendix hereto, pp. 15, 22, 32.

JURISDICTION

The jurisdiction of the district court was asserted under Title 5 U.S.C. sec. 1009. Judgment of dismissal was entered on May 12, 1964. Notice of appeal was filed July 16, 1964. Jurisdiction of this Court is invoked under 28 U.S.C. sec. 1291. For reasons stated *infra*, we question whether the appeal was timely.

STATEMENT

This action seeks the reversal of the district court's judgment which held that a determination by the Department of the Interior that minerals had not been found within the limits of the appellants' mining claims in sufficient quantities to constitute a valid discovery was based upon substantial evidence and was conclusive. The appellants, on March 25, 1957, filed an application for patent, Oregon 05396, to seven lode mining claims for gold and other minerals located near Grants Pass, Oregon. The mining claims are known as the Ida Group and consisted of the Black Jack, Buckskin, Wild Rose, Oregon, Big Mac, Little Mac and Big Rock. By notice dated February 12, 1958, which was promulgated under the authority of the mining laws, 30 U.S.C. sec. 22 *et seq.*, and 43 C.F.R., Part 221, the United States contested the validity of these claims. The complaint filed by the United States instituting the contest asserted, among other things, that minerals had not been found within the limits of the claims in sufficient quantities to constitute a valid discovery. The appellants denied the charges and a hearing was held before a Hearing Examiner of the Bureau of Land Management, Department of the Interior, at Grants Pass, Oregon, on October 1, 2, 20 and 21, 1959. During this hearing, numerous witnesses, including mining experts, testified on behalf of the United States and the appellants. In addition, many exhibits were admitted into evidence, including approximately 100 assay reports.

On the basis of the testimony given at the hearing, which is contained in some 700 odd pages of transcript together with exhibits, the Hearing Examiner issued a decision dated January 12, 1960 (App. 15). In this decision, the Hearing Examiner held that the lands upon which the mining claims were located were mineral in character but that " * * * there has not been a discovery of a valuable mineral deposit within the mining laws as interpreted by the Department on any of the claims remaining in issue,"

and declared the claims remaining in issue to be null and void (App. 19).

An appeal was then taken from the Hearing Examiner's decision to the Director of the Bureau of Land Management, who after a review of the record compiled at the hearing, issued a decision dated August 2, 1960, affirming the Hearing Examiner's decision (App. 22). The decision of the Acting Director of the Bureau of Land Management shows that a review was made of the proceedings before the Hearing Examiner and that consideration was given to the conflicting testimony. This decision concluded that, "While the evidence would justify a prudent man in further prospecting and exploring these claims, it falls far short of demonstrating the probability of an existing vein possessing in and of itself a present or prospective value for mining purposes, i.e., a vein (or series of veins) that can be exploited at a profit" (App. 29). This decision was appealed to the Secretary of the Interior who by decision dated August 22, 1961, No. A-28641 after having reviewed the record stated:

A review of the entire record in this case indicates that even though minerals have been found to warrant further exploration of these claims, there has been no discovery of actual mineral values necessary to validate a mining location. (App. 37.)

The appellants thereafter petitioned for reconsideration and reopening of this contest which was denied. They then petitioned for modification of the decision on reconsideration and finally, a supplemental petition for reconsideration, all of which were denied.

On April 25, 1962, the complaint in this action was filed in the United States District Court for the District of Columbia seeking judicial review of the agency action. A series of motions were thereafter filed concerning the appellants' lack of compliance with Rule 4 of the United States District Court for the District of Columbia. On

May 22, 1962, an order was entered denying the appellants' motion to excuse compliance with Rule 4. The appellants then filed a motion to transfer this action to the United States District Court for the District of Oregon. The district court by order dated June 6, 1962, denied this request.

A motion for judgment by default was then filed by the appellants, together with a request for reconsideration of their motion to excuse compliance with Rule 4. By order dated July 13, 1962, motions to strike the complaint and for a default judgment were denied. On July 16, 1962, order denying the appellants' motion for reconsideration of their previous motion with respect to Rule 4, was entered by which the appellants were advised that they had the right to appear in proper person. By order dated October 5, 1962, the district court denied the appellants' motion to require transmittal of the original record in this case. Previously, by letter dated August 6, 1962, the appellee had offered to make available to the appellants the entire administrative record for their inspection and copying without requiring an order of the court. (See Defendant's objections to motion of plaintiff filed September 10, 1962.) Thereafter the appellants filed a motion for an order in *forma pauperis* requesting that the appellee furnish the appellants with a copy of the transcript of the testimony of the mineral contest proceeding. In addition appellants again filed a motion to transfer the case, this time under 28 U.S.C. sec. 1361, to the District Court for the District of Oregon. Both motions were denied by order dated March 18, 1963. Appellants filed a request for reconsideration of the order of March 18, 1963, which was denied by order entered April 24, 1963.

Appellants and appellee both filed motions for summary judgment and motions in opposition, together with memoranda containing points and authorities as well as affidavits in support of their motions. In essence, the appellants alleged that the administrative decisions were null and void because they were arbitrary and capricious, contrary to the evidence, and not in accord with law. Numerous assertions were made to support these conclusions

which because of their length have not been summarized here. The appellee denied that the administrative opinions were arbitrary or capricious or contrary to law and stated that they were based upon substantial evidence. Both motions for summary judgments were denied by order entered August 22, 1963.¹

Pretrial statements were then filed by both parties. The appellee's proposed statement filed November 21, 1963, recited the events leading up to that proceeding and described the basis of the administrative decisions and the conclusions arrived at. The issue of law as seen by the appellee was "whether the Secretary's determination of the validity of the mining claims is conclusive when supported by substantial evidence."

A pretrial order was entered December 5, 1963. The facts supporting appellants' claim were therein detailed, as were the facts which supported the appellee's position. It was also stipulated that the appellee would offer in evidence the entire administrative record at the trial. Objections to the pretrial order were filed by the appellants and subsequently denied by order dated December 20, 1963.

Appellants filed a "notice-requests" asking to be excused from personal appearance and oral argument. Also requested was leave to make proof by deposition of any matter allowed. In the alternative, it was again requested that the case be sent to the United States District Court for the District of Oregon. Appellee opposed the motion only in that it sought to transfer the case and sought to make proof by deposition. On February 6, 1964, the appellants' motion to submit was granted and the alternative transfer of the case denied. This order was entered February 25, 1964.

A trial brief was prepared by the appellants and filed with the court. Subsequently a proposed judgment, find-

¹ Although we could not appeal from a favorable judgment, we note that since review proceedings such as these rest on the administrative record, they are appropriate for disposal on summary judgment and that is the normal practice. See *Asenap v. Huff*, 14 U.S.App.D.C. 118, 312 F.2d 358 (1962).

ings of fact and conclusions of law were filed. A hearing was had on May 6, 1964, at which time the court held for the appellee. Subsequently by order dated May 12, 1964, the court entered judgment in favor of the appellee and dismissed the complaint (App. 50). The court also filed extensive findings of fact and conclusions of law (App. 51).

Appellants on May 21 filed a motion for an extension of time to file a motion for new trial or for reconsideration, which the court denied by order entered June 3, 1964. Appellants subsequently filed a motion for a new trial and to set aside judgment on June 10. This motion was denied on June 26, 1964. Appellants thereafter made application with the district court to appeal *in forma pauperis*, which was denied by order dated June 26, 1964. Notice of appeal was filed July 16, 1964. Appellants' motion to appeal *in forma pauperis* was subsequently granted by this Court by order dated September 10, 1964.

SUMMARY OF ARGUMENT

I

The appeal was not timely filed, because a motion for extension of time to file a motion for a new trial is not authorized by the Federal Rules of Civil Procedure.

II

Judgment was properly entered for the Secretary of the Interior. The Secretary's factual determination that there was no valid discovery within the meaning of the mining laws is supported by evidence and is conclusive in the absence of fraud or imposition.

III

The arguments raised by the appellants are directed toward years of settled administrative practice and are either invalid or irrelevant. If accepted, they would compel the Department of the Interior to change very substan-

tially procedures followed for generations with Supreme Court approval.

ARGUMENT

I

The Appeal Was Not Timely

Since the matter is jurisdictional, we feel obliged to call it to the attention of the Court. We realize, of course, that appellants are not too familiar with federal practice and that some action was timely taken. Hence, this Court may desire to construe the request for an extension of time to file a motion for new trial (which, of course, is not extendible under Rules 59(b) and 6(b), F.R.Civ. P.) as if it had been a motion for a new trial. For the convenience of the Court, the motion is printed in the Appendix, *infra*. Absent an effective motion for new trial, the 60 days for appeal expired July 13, 1964.

II

The District Court Properly Entered Judgment for the Secretary of the Interior

On its face, the complaint filed in this case simply attacks a finding of fact made by the Secretary of the Interior. The Secretary, in affirming the decisions of the Director of the Bureau of Land Management and a Hearing Examiner, found that the appellants had not made a valid discovery within the limits of the subject mining claims. From this finding it follows, as a matter of law, that the alleged mining claims were invalid. As the Supreme Court stated in *Cameron v. United States*, 252 U.S. 450, 464 (1920):

Whether the tract covered by Cameron's location was mineral and whether there had been the requisite discovery were questions of fact, the decision of which by the Secretary of the Interior was conclusive in the absence of fraud or imposition, and none was claimed. [Citations omitted.]

The plenary authority of the Secretary of the Interior with respect to management and disposition of the public domain has been recently reaffirmed by the Supreme Court in *Boesche v. Udall*, 373 U.S. 472, 476-477 (1963), and *Best v. Humboldt Mining Co.*, 371 U.S. 334 (1963), wherein the Court stated at p. 338:

"Due process in such case implies notice and a hearing. But this does not require that the hearing must be in the courts, or forbid an inquiry and determination in the Land Department." *Orchard v. Alexander*, 157 U.S. 372, 383. If a patent has not issued, controversies over the claims "should be solved by appeal to the land department and not to the courts." *Brown v. Hitchcock*, 173 U.S. 473, 477. And see *Northern Pacific R. Co. v. McComas*, 250 U.S. 387, 392.

The Supreme Court has made clear in *Cameron* and *Humboldt*, *supra*, that the finding of fact by the Secretary that there was no valid discovery is virtually conclusive and the review will be limited to ascertainment of whether the claimant has been accorded due process by notice and a hearing. Clearly, there has been notice and a hearing and appellants have not alleged fraud or any facts from which fraud could be inferred.

The scope of judicial review in actions such as this has always been confined to the administrative record. This was recognized by this Court in *Morgan v. Udall*, 113 U.S. App.D.C. 192, 194, 306 F.2d 799, 801 (1962), cert. den., 371 U.S. 941, where it said:

It has long been established that the determination by the Secretary of a question of fact on a matter within his jurisdiction is well-nigh conclusive. Here the District Court with the administrative record before it, entered findings of fact and conclusions of law supporting the Secretary's decision. In light of the record, we have considered the claims advanced by the appellants and have discerned no adequate basis upon which that determination may be disturbed.

In this instance, the district judge did not choose to review the transcript of proceedings, which covered four days of hearings before an examiner, or the numerous exhibits. There were, however, in the record before the district judge trial briefs, memoranda, affidavits, and points and authorities filed with the cross-motions for summary judgment by both parties. There were also in the record the pretrial examiner's statement of facts entered December 4, 1963, and trial briefs presenting the contentions of both parties. Also previously filed with the court with the Secretary's motion for summary judgment were the decisions of the Hearing Examiner, the Director of the Bureau of Land Management and the Secretary of the Interior. On the basis of this material and government counsel's statements at the trial as to what was involved, the district judge determined that there was substantial evidence supporting the Secretary's decision and, in effect, granted the Secretary's motion for summary judgment by entering judgment for him and dismissing the complaint. This is clearly the correct result as a review of the decisions of the Hearing Examiner, the Director of the Bureau of Land Management and the Secretary of the Interior will show. These decisions are based upon a thorough review of the record made before the Hearing Examiner and show that they are based on a consideration of the conflicting testimony. It is readily apparent that they are supported by substantial evidence. In *Foster v. Seaton*, 106 U.S. App. D.C. 253, 255-256, 271 F.2d 836, 838-839 (1959), this Court held:

Thus the case really comes down to a question whether the Secretary's finding was supported by substantial evidence on the record as a whole. We think it was. There may have been substantial evidence the other way also, but we do not weigh the evidence.

See also *Asenap v. Huff*, 114 U.S.App.D.C. 118, 119, 312 F.2d 358, 359 (1962); *Morgan v. Udall*, 113 U.S.App.D.C. 192, 194, 306 F.2d 799, 801 (1962), cert. den., 371 U.S. 941; *Safarik v. Udall*, 113 U.S.App.D.C. 68, 74, 304 F.2d 944, 950 (1962), cert. den., 371 U.S. 901.

In short, as in so many of these cases, appellants' real complaint is that their evidence was not accepted, rather than the absence of any evidence to support the result.

III

Appellants' Arguments Present No Grounds Which Would Warrant Reversal of the Court's Judgment

Interspersed with assertions about the evidence, which fail to show lack of substantial evidence to support the decision, appellants make many assertions which controvert years of settled practice in these cases, are otherwise invalid, or are irrelevant.

The Supreme Court in *Best v. Humboldt Mining Co.*, 371 U.S. 334, 339 (1963), said:

Congress has entrusted the Department of the Interior with the management of the public domain and prescribed the process by which claims against the public domain may be perfected. [Footnote omitted.] The United States, which holds legal title to the lands, plainly can prescribe the procedure which any claimant must follow to acquire rights in the public sector.

The arguments raised by the appellants are not novel. We therefore comment only briefly on them.

A. *The court correctly refused to transfer this case to the district court in Oregon.*—At the time this suit was instituted, the only court that had jurisdiction over the parties was the United States District Court for the District of Columbia. After this suit had been filed, Congress passed the Act of October 5, 1962, 76 Stat. 744, 28 U.S.C. sec. 1361, giving the district courts throughout the United States generally broader venue in connection with suits brought against government officials. 28 U.S.C. sec. 1404(a) authorizes the transfer of a civil action to another district only "where it might have been brought." This case therefore could not properly have been transferred to the district court of Oregon. Compare *Hoffman v. Blaski*, 363 U.S. 335, 342-344 (1960).

B. *The appellants' contentions were before the district court.*—A review of the record before the district court shows that trial briefs and motions were filed by the appellants at every stage of these proceedings. These, together with the pretrial statement, adequately state the appellants' position. Since the appellants elected to not appear, this record speaks for them. There is no question but that personal appearance and argument are preferable but it is not likely that the appellants would have been permitted to present their case as fully as they would have liked, in any event. This case hinges on the question of whether there was substantial evidence to support the Secretary's decision. In addition, the issue before the court was again clearly and correctly stated by government counsel at the trial at the request of the district judge.

C. *The Oregon law of discovery has no application in this case.*—Federal law governs as to whether a discovery has been made. *Best v. Humboldt Mining Co.*, 371 U.S. 334, 339 (1963). The federal rule of discovery has been stated time and time again by the Secretary of the Interior and the Supreme Court to be that the discovery must be of such a character that "a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine." *Castle v. Womble*, 19 L.D. 455, 457; *Chrisman v. Miller*, 197 U.S. 313, 322 (1905); *Cameron v. United States*, 252 U.S. 450, 459 (1920); *Mulkern v. Hammitt*, 326 F.2d 896, 897 (C.A. 9, 1964). The Oregon law of discovery has no application in this case.

D. *The issuance of a patent for a part of the group of mining claims does not satisfy the discovery requirement of the mining laws.*—It is expressly provided by Title 30 U.S.C. sec. 23 that " * * * no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located." The existence of a valid discovery on an adjacent mining property or the issuance of a patent based on a discovery on land adjacent consequently is irrelevant and does not satisfy the explicit requirement of the mining laws.

E. *The requirement of present market value is not a change in the mining laws or a change in regulation requiring publication in the Federal Register.*—This question has been ruled on by this Court in *Foster v. Seaton*, 106 U.S. App.D.C. 253, 255, 271 F.2d 836, 838 (1959), where it was stated: "Thus, such a mineral locator or applicant, to justify his possession, must show * * *, *existence of present demand*, and other factors, the deposit is of such value that it can be mined, removed and disposed of at a profit."

F. *The Government's control of the sale of gold does not prohibit it from applying the established rule of discovery.*—It was stated in *Castle v. Womble*, 19 L.D. 455, 457 (1894), that "the requirement relating to discovery refers to present facts, and not to the probabilities of the future" and that "where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine, the requirements of the statute have been met * * *."

The Ninth Circuit in *Adams v. United States*, 318 F.2d 861 (1963), recently denied a patent and cancelled an alleged mining claim because it was not presently valuable for minerals. In *Adams*, it was economic conditions that had changed, invalidating the discovery. Appellants herein can have no more a vested interest in a standard for ascertaining whether a valid discovery has been made than they have in the economic conditions which fostered the standard. An analogous case is found in *United States v. Commodities Trading Corp.*, 339 U.S. 121 (1950), where the Government fixed the price of a commodity and then requisitioned it at the controlled price. The reason why mining is uneconomic does not change that fact nor justify use of the mining laws to obtain a fee patent or to use the land for nonmining purposes.

G. *Allegations of fraud are not properly raised at this time nor are they supported by any facts.*—The allegation of fraud contained at page 48 of appellants' brief was not presented to the court below or raised as an issue in the

complaint. An examination of the pretrial statement shows that this is not an issue in this proceeding. This charge is presented to the Court for the first time and in a posture which entitles it to no consideration. Appellants state, "There has been no showing that defendant's determinations are free from fraud and/or imposition." The charge of fraud raised is directed toward the manner in which samples of ore were taken, the contest hearing, the costs of defending, the lack of competency of officials including the attorney at the administrative hearing, superficial trial and the requirement that they continue to do annual assessment work. All of this is simply saying appellants do not like the ground rules which apply to an applicant seeking a federal patent. There is nothing to indicate any malevolence or similar motives.

The arguments advanced that the proceeding before the administrative agency was inadequate and that the administrative agency acted as accuser, prosecutor, judge and jury are likewise without merit and are another of the same attacks. The attack made on the administrative procedure is an attack on the Administrative Procedure Act itself, which clearly provides for the procedure which was followed in this case. 5 U.S.C. secs. 1001-1009.

The requirement that appellants share in the costs of the hearing before the examiner also is proper and was contained in the then current regulations, 43 C.F.R. 221.17, which are now found in 43 C.F.R. 1851.6. The appellants were advised that, if they were unable to pay their share of the reporting fees, they could have been relieved under the provisions of 43 C.F.R. 221.75(3). These regulations also provided that "Each party must pay for any copies of the transcript obtained by him * * *." 43 C.F.R. 221.75(c).

CONCLUSION

There is substantial evidence supporting the decision of the Secretary of the Interior. The district court's judgment is fully in accord with the evidence and should be affirmed.

Respectfully submitted,

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NOVEMBER, 1964.

APPENDIX

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Office of the Hearing Examiner

P. O. Box 3861
Portland 8, Oregon

Contest No. 0-213

January 12, 1960.

DECISION

Involving Buckskin, Wild Rose, Black Jack, Oregon, Big Mac, Little Mac and Big Rock Lode Mining Claims in Secs. 25 and 26, T. 35 S., R. 5 W., W.M., Oregon. Application No. 05396.

UNITED STATES OF AMERICA, CONTESTANT

v.

C. F. PRUESS, SR., ET AL, CONTESTEES

Protest against Black Jack Dismissed; Buckskin, Wild Rose, Oregon, Big Mac, Little Mac, and Big Rock declared Null and Void.

The Contestant initiated an invalidation proceeding against the mining claims involved in patent application No. 05396 and the claimants thereof by the filing of a complaint in the Oregon Land Office on February 12, 1958. The complaint alleged as to each of the claims as follows:

- (a) The land embraced within the claim is nonmineral in character;
- (b) Minerals have not been found within the limits of the claim in sufficient quantities to constitute a valid discovery,

A hearing was held in Grants Pass, Oregon beginning on October 1, 1959, at which the parties were allowed to present evidence and to examine and cross-examine witnesses. At the hearing the Contestant was represented by L. K. Luoma, Office of the Regional Solicitor, United States Department of the Interior, Portland, Oregon, and the Contestees were represented by C. F. Pruess, Sr., Attorney at Law, Grants Pass, Oregon.

At the hearing the Contestant moved to have the complaint against the Black Jack Claim dismissed on the grounds that an examination made after the complaint was filed had verified the existence of a valuable mineral deposit on the claim. This motion was granted. Accordingly, the complaint against the Black Jack Claim is dismissed.

The group claims were located primarily for gold and silver with copper, nickel, molybdenum, and gallium of secondary interest and potential by-products. The claims were referred to as the Ida Group and are situated 8 miles northeast of Grants Pass on the Granite Hill road on rough, steep terrain within the Louse Creek drainage. The underlying substrata consist of greenstone and serpentine with contacts between the two within the group of claims. The timber on the group was estimated to be valued at \$88,394.30.

The factual evidence regarding the nature of the mineralization on the claims submitted on behalf of both parties was extensive but appeared to be similar. This evidence was to the effect that a quartz vein was exposed in the Big Mac tunnel, that this vein had a maximum width of 18 inches and tapered down to nothing within the tunnel, and that a quartz vein had been exposed in the Big Mac discovery cut which had a strike toward the tunnel on the Little Mac and toward exposures on the Wild Rose. The improvements on the Little Mac consisted of the discovery cut, a tunnel and several pits. Mineralization was exposed within the improvements and verified by the samples secured by the witnesses. The vein structure in the "Mother Lode" area of the Wild Rose (Exh. A) was approximately 6 feet in width, but the mineralized portion of the vein was limited. Vein structures were also found on the Buckskin Claim in and near the discovery cut, on the east end of the Wild

Rose, and smaller veins were exposed on the Big Rock and Oregon Claims.

Numerous samples were taken and assayed by the parties at locations shown on Exhibits A, 1 and 8. Selected samples taken from small lenses or pods within the vein structures had indicated assay values up to \$85.98 a ton (Sample 21, Exh. W from the discovery cut on the Wild Rose). Other samples taken across the width of the vein structures a short distance away, often revealed values of little or nothing. The mineralization on the group of claims was described by a Government witness as being short, nonpersistent stringers of quartz that would pinch and swell and disappear and then come back again.

The documentary evidence presented at the hearing included the Oregon Metal Mines Handbook published by the Department of Geology and Mineral Industries in 1952. The article on page 79 of this bulletin relates to the Ida Group of claims, including the Black Jack. The reported history and geological background of the claims are included in the article.

The conclusions of the witnesses regarding the mineralizations on the claims varied. The Government witnesses concluded that a prudent person would not be justified in expending further labor and means on the claims with a reasonable prospect of success in developing a valuable mine. Mr. C. F. Pruess, Jr., who testified on behalf of the Contestees, expressed the opposite conclusion and other Contestee witnesses stated that there was sufficient mineralization to stimulate interest and that further prospecting and exploration would be justified.

There was sufficient evidence at the hearing to conclude that the land upon which the claims are located is mineral in character. Consequently, the sole question to be determined is whether there has been a discovery of a valuable mineral deposit on each of the claims within the meaning of the mining laws.

The mining laws require the discovery of a *valuable mineral deposit* within the limits of a claim prior to its location. 30 U.S.C. Sec. 22; *Waskey v. Hammer*, 223 U.S. 85 (1912); *United States v. Wilmot D. Everett et al.*, A-27010

(October 17, 1955); *United States v. Josephine Lode Mining and Development Company*, A-27090 (May 11, 1955). The requirements of the statute concerning discovery are met where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine. *United States v. M. W. Mouat et al*, 61 I.D. 289 (1954) and cases cited therein.

Oregon Basin Oil and Gas Company, 50 L.D. 253 (1923) citing *Castle v. Womble*, 19 L.D. 455 (1894) and *Jefferson-Montana Copper Mines Co.*, 41 L.D. 320 (1912) makes crystal clear that "discovery" upon which a claimant relies must be of a *particular deposit*, actually discovered, which warrants further expenditure of time and money in its development. The discovery, to satisfy the requirements of the law, means more than the showing only of isolated bits of mineral not connected with or leading to substantial value. *United States v. Frank J. Miller*, 59 I.D. 446 (1947).

The Contestees contended in effect that the claims are located in a recognized mining district, that a vein or lode has been identified on each claim, that gold, silver, or other valuable mineral has been found in place and verified by the numerous samples and assay reports secured by both parties and that this is sufficient to satisfy the discovery requirements of the mining laws. In support of this contention the Contestees cited *United States v. Merger Mines*, Coeur d'Alene 013942, Contest No. 977, Idaho (January 19, 1954), *United States v. A. A. M. Arnold, et al*, Coeur d'Alene 013984, Contest 978, Idaho (April 8, 1954) and *United States v. C. F. Smith*, 66 I.D. 169 (April 30, 1959).

The two Coeur d'Alene decisions are based on factual conclusions that surface indications have been found which have in numerous occasions within the district led to valuable deposits at great depth. The Director then found that from this factual conclusion a prudent man would be induced to believe that a valuable deposit had been found which would justify expenditures in the exploration and development of the deposit and consequently that there had

been a discovery of a valuable mineral deposit within the meaning of the mining laws. In the Smith case, the Department upheld a hearing officer's decision that there had been a discovery of a valuable deposit. This decision was based on the conclusion that there was sufficient evidence to support the hearing officer's finding of fact that because of the quantity and quality of the minerals found within the claims a prudent man would be warranted in the expenditure of his labor and means in an effort to develop a paying mine.

There was ample evidence at the hearing that veins or lodes containing non-persistent stringers of quartz with gold, silver, or other valuable minerals had been identified on each of the claims. The history of other claims in the area and the limited amount of surface or near surface production in the district, together with the limited quality or quantity of minerals on the claims is not conducive to the belief that a valuable mineral deposit has been found or can be identified either on the surface or at depth. The mineral showings on the claims suggest that the further expenditures of time and means on the claims would be directed toward the exploration for such a deposit rather than toward the development of a deposit which has been found. Therefore, I conclude that there has not been a discovery of a valuable mineral deposit within the mining laws as interpreted by the Department on any of the claims remaining in issue.

Accordingly, I declare that the Big Mac, Little Mac, Oregon, Big Rock, Wild Rose and Buckskin Lode Claims are null and void for lack of a valid discovery. The protest against the Black Jack Claim has been dismissed for the reasons set forth herein.

This decision becomes final 30 days from its receipt unless an appeal to the Director, Bureau of Land Management, is filed. If an appeal is taken, there must be strict compliance with the regulation in 43 CFR, Part 221. (See enclosed Form 4-1364).

If an appeal is taken by C. F. Pruess, Sr., et al, the adverse party to be served is:

Office of the Regional Solicitor
U.S. Department of the Interior
P.O. Box 3537
Portland 8, Oregon.

If an appeal is taken, the amount of the filing fee will be computed on the basis of \$5.00 for *each* mining claim included in the appeal. If the appeal covers all six claims adversely affected by this decision, the total filing fee is \$30.00.

GRAYDON E. HOLT,
Hearing Examiner.

Enclosure

Distribution:

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Glenn Beale,
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Standard Distribution

MINING CLAIMS

• 5

Discovery

A valid discovery upon a mining claim is made where there is discovered a mineral-bearing vein possessing in and of itself a present or prospective value for mining purposes. The showing must reveal the probability of a mineral deposit of commercial value i.e., one that can be mined at a profit. *United States v. C. F. Pruess Sr., et al.*, Contest 0-213 (Oregon)

(August 2, 1960).

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Contest No. 0-213 (Oregon)

5.04g

August 2, 1960.

Certified Mail
Return Receipt Requested

DECISION

Buckskin, Wild Rose, Oregon, Big Mac, Little Mac, and Big Rock Lode Mining Claims, situated in secs. 25 and 26, T. 35 S., R. 5 W., W.M. Oregon.

UNITED STATES,

v.

C. F. PRUESS, SR., EXECUTOR, W. J. GORDON, GLENN BEALE, JENNIE BULFER, RAY HARRISON, ROY N. GORDON, HAZEL VAN ALLEN PRICE AND ANY UNKNOWN HEIRS OR DEVISEES OF IDA G. ARCHERD, DECEASED.

Decision Affirmed

The contestees, above named, have appealed from a decision of the Hearing Examiner dated January 12, 1960, declaring the Buckskin, Wild Rose, Oregon, Big Mac, Little Mac and Big Rock lode mining claims null and void. The claims were declared invalid for want of discovery.

After mineral examination of the mining claims listed in mineral patent application, Oregon 05396, the Bureau of Land Management initiated this contest proceeding. The complaint listed the six mining claims involved in this appeal as well as the Black Jack, the seventh mining claim in the group known as the Ida Group. The complaint charged

that the land embraced within the Ida group is nonmineral in character and that minerals have not been found within the limits of each claim in sufficient quantities to constitute valid discoveries. The charges against the Black Jack were withdrawn at the opening of the hearing; that claim has been clear-listed for patent, and is not involved in this appeal.

The Ida Group was originally located in 1890 and taken over by the Granite Hill in 1904. It was relocated in 1920; Archerd acquired the property in 1924. Most of the workings in the group predate 1924, but many of those workings have been cleaned out and additional exploration was done with a view of establishing discovery to allow the issuance of patent. Mr. Pruess has been acquainted with the mine since about 1930; he is the attorney and executor of the Archerd estate. The mine has not been operated on a commercial scale in the memory of witnesses for the contestees.

The Ida Group is situated about 8 miles northeast of Grants Pass, Oregon, in an area where there has been mineral activity for well over 70 years. The mining claims are alleged to contain valuable mineral deposits of gold, silver, copper, nickel, molybdenum, gallium, etc. There are patented mining claims within close proximity to the Ida group. Although some of the mines in the Grants Pass area have been past producers, none are presently producing (TR 570).

The ultimate question to be resolved is whether the claims, subject of this appeal, have been validated by discovery. Since our decision is made on that point it is not necessary to inquire concerning the mineral character of the land. For that reason charge (a) that "the lands embraced within the claims is nonmineral in character" is dismissed. Since the good faith of the mining claimants is not in question any testimony concerning the timber value of the land is disregarded. In this connection it is merely necessary to note that if a valid discovery were demonstrated, then, regardless of timber values, the claims would be subject to patent if all else be regular. Because of the holdings in this decision it will not be necessary to determine what effect,

if any, results from the fact that the claims may cover O & C lands. (Act of April 8, 1948 (62 Stat. 162)).

The Government's evidence consisted of testimony by expert mineral examiners. They showed that they had conducted several examinations of each of the mining claims and viewed physical exposures of stringers, veinlets and minor lenses or pods of mineral bearing rock on each. Mr. Pruess and/or other agents of the contestees had accompanied the examiners, and specimens for assays were taken where suggested by the contestees in the customary fashion. (TR 43) Assay reports showed values from traces to substantial value per ton. The assay values, they testified, were not indicative of good ore because there was no continuity of structure, and because the cost of mining substantial quantities of worthless rock to recover the values of the veinlets or pods far exceeded the mineral values and rendered those values inconsequential.

The Government witnesses showed that although veinlets had been exposed at the time of the earlier visits, bulldozing (in furtherance of demonstrating a discovery) by the appellants had completely obliterated traces, in many instances of those veinlets or seams. "But that structure is completely bulldozed out. That structure doesn't exist any more. It's gone with the bulldozer." (TR 200). And again in TR 205 it was stated "There were a bunch of seams in there that had—that evidently didn't have enough quartz to fill them completely with quartz. They came out some places and they were altered and they were just mud, nothing filled. They would go along and there would be another pod of quartz, but there was no quartz vein as such in there except some small short non-persistent stringers running through that, and each one of those structures, it's borne out by the fact that every time you bulldozed, those things disappeared. More of them appear, that's true, but the vein to follow, any one given vein, it would be an impossibility. You could follow the structure, but not any given vein."

Even bearing in mind that the Black Jack had been clear-listed, and the proximity of nearby patented mining claims, it was the opinion of the examiners that greater values would not be encountered at depth and that a prudent man would not be justified in the further expenditure of labor and means, with a reasonable prospect of success, in developing a valuable mine within the limits of any of the six claims.

The evidence offered by the contestees concerning visible evidences of mineralization did not differ materially from the Government's. However, the contestees attempted to show that the Black Jack veins continued into these claims and that evidence of surface mineralization, when considered in connection with the proximity to patented claims, would lead a prudent man to the conclusion that greater values exist at depth, and that these claims are of present and prospective value for mining purposes justifying a prudent man in the further expenditure of labor and means with a view to developing these properties.

Mr. Pruess, Jr., one of contestees' witnesses, on cross-examination stated that he would not now spend time or money in a mining operation on the Oregon and Big Rock but would spend his time "further prospecting" those claims (TR 400, 454), and that he would be satisfied to do further exploratory work on the Wild Rose. (TR 427).

Mr. Ramp, an expert geologist, on behalf of the contestees, testified that known mines compared with the Ida Group contain dissimilarities in the structures compared (TR 515) and that as to these claims he "wouldn't say as to whether any of them would qualify as something other than a prospect" and "that further prospecting, further prospect, would be necessary, yes." (TR 536).

Another witness appearing for the contestees, Mr. Pressler, a consulting mining metallurgical engineer, stated that the Big Mac is a "prospect" and is not in the position where one can start a mining job and he would not be prepared to

start mining on the Big Mac. "There is only one property in this whole group that is in any way close to the position of developing enough to justify the starting of mining operations and that is the main workings on the Black Jack * * *." (TR 588).

Concerning the Buckskin, Mr. Pressler said—"all three of the ore bodies would only weigh a few hundred pounds and they could weigh a ton or more." (TR 619). In answer to the question (concerning an assay sample of a lens from the Wild Rose)—"Then, whether there was any continuity would have to be found by further prospecting, I suppose?" he answered—"Yes, that is right." (TR 621). He also testified that the costs of mining the known veinlets would far exceed the value of the recovery and "I don't think any engineer in his right mind would have a mineable width of ore if it was five inches, unless it was pure gold." (TR 641). And, as to whether the known veinlets would lead to value at depth he said—

"Well, actually, mining in this part of the country has not progressed to the point where we can definitely conclude that we have a deep mineral province and that veins would progress to some depths or intermediate depths or anything that would be similar to some of the other larger mining districts we have in the United States, and you might say the country is in an undeveloped point. And it is like some of the better geologists and experts in that field say, the country justifies further exploration and I think Dr. Wells was quoted from the back of one of these quadrangle maps as recommending that the properties that have strong mineralizations, strong structures, should be explored to depth. That is all I can say." (TR 631).

Another of contestees' witnesses, Mr. George C. Heikes, a consulting economic geologist, stated, concerning the Wild Rose—"It is all part of the same area, and the surface geology indicates enough structure and so forth to make it worthwhile further prospecting." (TR 670). By prospect-

ing "Yes, I mean exploration work." (TR 671). He further stated on cross-examination—" * * * I would follow this up and bulldoze systematically all along, trying to outline this vein from an exploration point of view. * * * I would suggest undertaking some drilling on the zone of hydrothermal showing on the contact * * * at the eastern end of the Wild Rose * * *. And I would, after doing some preliminary bulldozing on the Big Rock and Oregon, I would try to see what structures could be developed up in this area that might prove worth-while." (TR 675, 677).

Mr. Pruess, Sr., testified to the fact that the veinlets uncovered to date justify the belief that pay ore would be encountered and that a prudent man is justified in the further expenditures of labor and means on the six claims.

On the evidence of record the Hearing Examiner found:

"The history of other claims in the area and the limited amount of surface or near surface production in the district, together with the limited quality or quantity of minerals on the claims is not conducive to the belief that a valuable mineral deposit has been found or can be identified either on the surface or at depth. The mineral showings on the claims suggest that the further expenditures of time and means on the claims would be directed toward the exploration for such a deposit rather than toward the development of a deposit which has been found."

He thereupon declared the six mining claims null and void. The appellants contend the decision is contrary to law and the weight of evidence.

A valid location of a mining claim can be made only if a valuable mineral deposit has been discovered within the limits of the claim. 30 U.S.C., secs. 22 and 23. A discovery of such deposits which will sustain a location has often been held to be one which warrants a man of ordinary prudence in the further expenditure of time and money with a reasonable prospect of success in the development

of a paying mine. This "prudent man" rule of discovery, enunciated in *Castle v. Womble*, 19 L.D. 455 (1894), *Chrisman v. Miller*, 197 U.S. 313 (1905), *Jefferson-Montana Copper Mines Co.*, 41 L.D. 320 (1912) and others, is applicable in determining whether a valid location within the meaning of the mining laws has been demonstrated within the Ida Group. Under the prudent man rule the actual disclosure of valuable ore is not essential to a sufficient and adequate discovery. The showing must, however, reveal the *probability* of a mineral deposit of commercial ore—in other words—the probable existence of a mineral deposit that may sustain operations. A valid discovery is made where there is discovered a mineral-bearing vein possessing in and of itself a present or prospective value for mining purposes.

Even though pay ore is not exposed, the validity of discovery would be established if the evidences of mineralization are such as would induce a prudent man in further expenditures in the probability that the veins exposed will lead to greater values if mining operations for the exploitation of the claims are undertaken. By "probability" we do not mean mere conjecture, hopes or beliefs that a deposit may exist—but if similar geological conditions elsewhere have led to greater values at depth, then it would appear that a prudent man would be justified in undertaking mining operations to follow the lode in the anticipation, the probability, of encountering richer (commercial) values on these claims. See *Oom Paul Consolidated Mining Company*, D-22955 (July 23, 1915); *Lincoln Mining Co.*, A-21978 (December 22, 1939) and compare, *East Tintic Consolidated Mining Claim*, 40 L.D. 271 (1911).

By their patent application the contestees asserted they had complied with the applicable mining laws and the claims had been each validated by discovery. See *Foster v. Seaton*, 271 F.2d 836 (1959). Conceding that mineral bearing veins have been exposed on each claim, the question for determination is whether the evidences of mineralization indicate the existence or *probable* existence of "valu-

able mineral deposits". Where the total mineral value of stringers, veinlets, pods or lenses on a claim may "weigh a few hundred pounds and they could weigh a ton or more" and even though the ore may assay \$85.98 a ton, and the cost of extraction even without considering the costs of transportation, milling, etc., exceeds the recoverable values, a prudent man would not be justified in the further expenditure of labor and means in an attempt to establish a paying mine on the property; in such event a discovery of "valuable mineral deposits" has not been demonstrated and the claims are null and void for lack of discovery. The evidence adduced concerning each and every one of the six claims shows to a certainty that the known visible deposits are not conducive to the establishment of a mining operation on any one of them which could even justify the cost of extraction.

The dissimilarities to other claims in the area are such that no inference may be gained leading to the belief that greater values will be encountered at depth in the Ida Group. Considering the history of other claims in the area and the geology of the mining district, it appears that greater values will not be reached at depth.

While the evidence would justify a prudent man in further prospecting and exploring these claims, it falls far short of demonstrating the probability of an existing vein possessing in and of itself a present or prospective value for mining purposes, i.e., a vein (or series of veins) that can be exploited at a profit. The testimony of Mr. Pruess, Sr., supports this finding. He indicated the hope and belief that further operations on these claims would disclose valuable bodies of ore capable of supporting successful mining operations. In substance he reiterated the opinion of appellants' other witnesses—that these claims are good "prospects" justifying expenditures not for exploitation but in further exploration. But justification of expenditures for such purpose is not expenditure with a reasonable prospect of success in *developing* a paying mine as is re-

quired to demonstrate a valid discovery within the meaning of the mining laws.

The appellants urge presumption of validity attaching to these claims because of the age of the locations. However, we find although a presumption of validity may be indulged in between parties claiming adversely to the locator, there is no such presumption between the Government and a person claiming adversely to it. Cf. *Union Oil Company of California et al.*, 65 I.D. 245 (1958); *Clipper Mining Company v. Eli Mining and Land Company*, 194 U.S. 220 (1904); *Belk v. Meagher*, 104 U.S. 279 (1881).

The decision of the Hearing Examiner is affirmed.

The contestees, appellants herein, are allowed the further right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of \$5 for *each* mining claim included in the appeal. If the appeal covers all mining claims adversely affected by this decision the total filing fee is \$30.00. In taking an appeal there must be strict compliance with the regulations.

In the event of an appeal the adverse party to be served is:

Regional Solicitor
Department of the Interior
P. O. Box 3537
Portland 8, Oregon

CHARLES P. MEAD,
Acting Director.

Enclosure

DISTRIBUTION:

Mr. C. F. Pruess, Sr., Attorney at Law (Certified Mail)
 Regional Solicitor
 Geological Survey (3)
 Mrs. Jennie Bulfer (Regular Mail)
 Mr. Ray Harrison (Regular Mail)
 Mr. Glenn Beale (Regular Mail)
 Mr. Roy N. Gordon (Regular Mail)
 Mrs. Hazel Van Allen Price (Regular Mail)
 Mr. W. J. Gordon (Regular Mail)
 Minerals Staff Officer (3)
 Hearing Examiner, Graydon E. Holt (Regular Mail)
 Hearings Administrative Officer
 Appeals List No. 1
 BF

78710-60

UNITED STATES,

v.

C. F. PRUESS, SR., ET AL.

Decided Aug. 22 1961

A-28641

Mining Claims: Lode Claims—Mining Claims: Discovery

A valid discovery on a lode claim requires finding valuable deposits of mineral in rock in place so located that the vein or mineral-bearing body may be followed with reasonable hope and assurance of ultimately developing a valuable mine. Reports of assays showing that occasional samples of material from lode mining claims contain high values for gold are not conclusive evidence of a valid discovery but other relevant factors are to be considered, such as the extent of mineral deposits on the claims and the number of samples of material assayed from the claims showing only a trace or no mineral values, in determining whether a discovery of valuable minerals has been made.

Mining Claims: Determination of Validity—Mining Claims: Discovery

A decision declaring six lode mining claims null and void for lack of discovery is proper where evidence at a hearing supports the conclusion that there has not been a discovery of minerals of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing valuable mines, although he might be justified in further exploration of the claims with the view of making a discovery.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Office of the Secretary
Washington 25, D. C.

A-28641

Contest 0-213 (Oregon)

Lode mining claims declared null and void
Affirmed

UNITED STATES,

v.

C. F. PRUESS, SR., EXECUTOR OF ESTATE OF IDA G. ARCHERD,
DECEASED, ET AL.

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

C. F. Pruess, Sr., and others¹ have appealed to the Secretary of the Interior from a decision of August 2, 1960, by the Acting Director of the Bureau of Land Management which affirmed a decision by a hearing examiner holding null and void six lode mining claims in sections 25 and 26, T. 35 S., R. 5 W., W. M., near Grants Pass, Oregon. The claims are known as the Ida Group and consist of the Buckskin, Wild Rose, Oregon, Big Mac, Little Mac, and Big Rock.

On March 25, 1957, an application for patent, Oregon 05396, was filed for these and one other claim in the Ida Group, namely the Black Jack. In a notice of February 12, 1958, the United States contested the validity of the claims included in the patent application charging (a) that the land embraced within the claims is nonmineral in character, and (b) that minerals have not been found within the limits of the claims in sufficient quantities to

¹ The other contestants, all of whom are also appellants, are: W. J. Gordon, Glenn Beale, Jennie Bulfer, Ray Harrison, Roy N. Gordon, Hazel Van Allen Price, any unknown heirs or devisees of Ida G. Archerd, deceased.

constitute a valid discovery. The contestees denied the charges and a hearing thereon was held before an examiner at Grants Pass, Oregon, on October 1, 2, 20, and 21, 1959.

At the outset of the hearing, the Government moved to have the complaint against the Black Jack dismissed as an examination of the claim made after the complaint was filed established that a valuable mineral deposit had been discovered thereon. The motion was granted, and the hearing involved the six remaining claims in the Ida Group.

The record shows that mining has been carried on in this area and that the claims here involved have been known since 1890. Some of these claims have been mined intermittently in the past, but not within the last thirty years or more (Transcript of hearing on Contest No. Oregon 213, pp. 692-693).² The principal evidence concerning minerals on the claims consisted of assay reports on a large number of samples of material from the claims. As the examiner's decision noted, some of the assay reports showed that the samples contained very high values for gold. This was true of several samples submitted by the Government as well as of samples assayed and submitted for the contestees. Nevertheless, assay reports on approximately 100 samples taken from the claims by mineral examiners for the Government showed that more than one-half of the samples contained only a trace of gold or no gold whatsoever. Evidence at the hearing indicated that although the lands on which the claims are located contain discontinuous stringers of quartz with gold, silver, or other valuable minerals, no solid mineralized structure or vein could be identified (Tr. 202-205, 254-256, 335, 407, 621). Witnesses for the contestees testified that mineral deposits were exposed on the claims which would justify further prospecting and exploration (Tr. 398, 400, 427, 536, 586-588, 669-671, 674-677). Government mineral examiners testified that a per-

² Unless otherwise noted, page numbers hereafter will refer to this transcript.

son of ordinary prudence would not be warranted in the further expenditure of time and effort and money to develop a paying mine on the contested claims (Tr. 68, 94, 152, 158-159, 171).

By decision of January 12, 1960, the examiner held that the land upon which the claims are located is mineral in character. The decision pointed out that a mining claim is not valid in the absence of a discovery of a valuable mineral deposit within its limits and that a discovery of mineral means that minerals have been found of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine (*Chrisman v. Miller*, 197 U. S. 313 (1905)). The examiner held that the discovery upon which a claimant relies must be of a particular deposit, actually discovered, which justifies the further expenditure of time and money in its development. Although evidence at the hearing indicated that non-persistent and discontinuous stringers of minerals had been identified on each of the claims, the examiner concluded that a valuable mineral deposit within the meaning of the mining laws has not been discovered, that is, there has been no discovery of a mineral in a mass so located that the vein or mineral-bearing body can be followed with reasonable hope and assurance of ultimately developing a paying mine (*Freeman v. Summers et al.*, 52 I. D. 201 (1927)). Accordingly, the examiner held the claims null and void for lack of discovery.

After a careful review of the extensive evidence submitted at the hearing in this case, the Acting Director affirmed the examiner's decision. Both the Acting Director's and the examiner's decisions distinguished the claims here involved, on which minerals have been found warranting further prospecting and exploration, from claims on which a valid discovery of minerals sufficient to support a patent application has been made (*cf. Freeman v. Summers, et al. supra*, 204-205). The correctness

of the determination that a valid discovery has not been made on these claims is in issue on this appeal.

The record indicates that one of the appellants and his son have worked extensively on the claims and that this appellant has great confidence that the claims are valuable (Tr. 681-690). Moreover, occasional samples of material from the claims showed very high gold values. Nonetheless, the contention on this appeal that the mineral values on these claims as shown by assay reports are much greater than those on other claims patented within recent years by the United States, some of which patented claims are in the vicinity of these claims, is of no avail. Each contest is decided on the basis of specific conditions affecting the individual claims in the particular contest, and assay reports on samples of material from a claim are neither an absolute test nor the sole basis for determining whether a claim is valid (see *Cataract Gold Mining Co. et al.*, 43 L. D. 248, 252-254 (1914); *Big Pine Mining Corporation*, 53 L. D. 410 (1931)). Thus, if as is suggested by this record, a disproportionately large amount of overburden has to be mined to recover valuable deposits of mineral, and the cost of mining substantial quantities of worthless rock to recover the values far exceeds the value of the deposits, then the fact that occasional mineral samples containing high values are found on a claim is not conclusive evidence that there has been a valuable discovery of minerals within the meaning of the mining laws.

Furthermore, a vein or lode, to be locatable and patentable under the mining laws, must be a rock in place bearing deposits of valuable minerals (*Henderson et al. v. Fulton*, 35 L. D. 652 (1907)). Where, as in the instant case, no persistent vein or mineral-bearing body is exposed, but only discontinuous stringers of mineral deposits appear, such condition is to be weighed, along with other relevant factors (including assay reports showing mineral values of the material, and evidence of the amount of overburden which must be removed to recover valuable min-

erals) in determining whether there has been the required discovery of a mineral-bearing body which can be followed with reasonable hope and assurance of ultimately developing a paying mine. *Freeman v. Summers et al. supra*; *United States v. Duvall and Russell*, 65 L. D. 458 (1958); *United States v. Santiam Copper Mines, Inc.*, A-28272 (June 27, 1960).

A review of the entire record in this case indicates that even though enough minerals have been found to warrant further exploration of these claims, there has been no discovery of actual mineral values necessary to validate a mining location. None of the matters asserted on this appeal provides a basis for modifying the determination that a person of ordinary prudence would not be justified in the further expenditure of his money and means in attempting to develop a paying mine on the claims. Accordingly, for the reasons discussed herein and in the Acting Director's decision, the determination that these claims are null and void is proper.

Therefore, pursuant to the authority delegated to the Solicitor by the Secretary of the Interior (sec. 210.2.2A (4)(a), Departmental Manual; 24 F. R. 1348), the decision of the Acting Director, Bureau of Land Management, is affirmed.

(Sgd) EDWARD W. FISHER,
Deputy Solicitor.

Filed August 18, 1964, Harry M. Hull, Clerk

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action 1331-62

C. F. PRUESS, SR., ET AL, PLAINTIFFS,

vs.

STEWART L. UDALL, DEFENDANT.

OFFICIAL TRANSCRIPT OF PROCEEDINGS

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GERALD NEVITT
Official Reporter

U.S. Court House
Washington 1, D.C.

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Extension 274

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action 1331-62

C. F. PRUESS, SR., ET AL, PLAINTIFFS,

vs.

STEWART L. UDALL, DEFENDANT.

May 6, 1964,
Washington, D.C.

The above cause came on before The Honorable ALEX-
ANDER HOLTZOFF, United States District Judge.

APPEARANCES:

For the Plaintiffs: (No Appearance)

For the Defendant: HERBERT PITTLE, Esq., Attorney,
Dept. of Justice.

PROCEEDINGS

The Deputy CLERK: Case of C. F. Pruess, Sr., et al vs.
Stewart L. Udall.

Mr. PITTLE: My name is Herbert Pittle, Attorney, De-
partment of Justice, who is appearing for the defendant.

As Your Honor knows, Mr. Pruess will not appear. The
pretrial order allowed him to submit briefs and without
being in default.

The COURT: Yes.

Mr. PITTLE: First, I should like to offer as an exhibit,
pursuant to the pretrial order, and stipulation, we will offer
as an exhibit the administrative record in the——

The COURT: First tell me what the case is about before
you offer any evidence. In other words, make an opening
statement as though opposing counsel was here.

Mr. PITTLE: I don't know, since the plaintiffs are not rep-

resented, I didn't know on what basis Your Honor wanted me to appear.

The COURT: It is just the other way. That puts a greater duty on you to represent both sides.

Government counsel should at all times represent both interests, anyway.

Mr. PITTLE: We have a greater responsibility, yes, sir.

The COURT: I do not know whether they still have this motto in the Department of Justice, I imagine they do, but they did when I was there years ago, that the Government always wins a case when justice is done to one of its citizens.

Mr. PITTLE: That is still the slogan and the hallmark.

This action was brought by Mr. Pruess—

The COURT: May I inquire as a personal matter, are you from the Lands Division?

Mr. PITTLE: Yes, I am in the Lands Division, Your Honor.

The action was brought by Pruess for mandatory relief and injunction and declaratory relief. He wants to review proceedings before the Department of the Interior which disallowed five mining locations and five mining claims.

Now the facts giving rise to the matter are these. In 1957 the plaintiffs applied for patents for gold and silver mines in Oregon, having asserted that they have made valuable mineral discoveries. Contests were filed by the Department of the Interior under the mining laws, Title 30, U.S. Code, and the rules and regulations of the Department of the Interior, and in accordance with the Code of Federal Regulations.

As Your Honor probably knows—Contests were filed against the application for patents in accordance with the mineral laws of the United States. A hearing was had before a Hearing Examiner appointed by the Bureau of Land Management and evidence was—

The COURT: Before you give the story in detail tell me in a sentence or two just what is involved here, what the decision is which is sought to be reviewed.

Mr. PITTLE: The decision disallowed mining claim for gold and silver.

That decision was appealed to the Secretary of the In-

terior, who affirmed the decision of the Bureau of Land Management.

The plaintiff asks this Court to review that decision and he contends that the Department of Interior erred on two grounds. First, he says that factually he proved discovery of a valuable mineral; secondly, he says they erred as a matter of law in not considering certain factors relating to other mining locations which should have been taken into consideration.

Now we have filed an answer and of course we assert that the Court is limited, in its review which the plaintiff seeks, to the administrative record made before the Hearing Examiner of the Department of the Interior, where all of the evidence was put in; that on the basis of the authorities, decisions which we rely upon, the Court may not consider the evidence or hear the evidence de novo, it must review the administrative record. Under *Foster against Seaton*, one of our Court of Appeals cases, *Cameron against the Secretary*—

The COURT: Let me have the case. Never refer to half a dozen cases. Give me the one case.

Mr. PITTLE: *Cameron v. United States*, 252 U.S. 450.

The COURT: Have you got the book here?

Mr. PITTLE: No, I don't have the book.

The COURT: Always bring the book with you on the one case that you rely on.

Mr. PITTLE: I have appeared before Your Honor before and this is the first time you have ever asked for that.

The COURT: I always do.

I will send for the book.

Mr. PITTLE: If I may, there is a very recent decision of the 9th Circuit, on March 13, the Court of Appeals for the 9th Circuit, which has not yet been reported.

The COURT: Just a moment. Give me the citation to the case that you rely on principally.

Mr. PITTLE: *Cameron v. United States*, 252 United States 450, as affirmed, if I may say so, very recently it's been confirmed and affirmed by the Supreme Court in 371 U.S. 334.

The COURT: What do——

Mr. PITTLE: Best v. Homboldt Placer.

The COURT: What do those cases stand for?

Mr. PITTLE: Those cases say in so many plain words that the Secretary of the Interior's determination as to the validity or invalidity of a mineral discovery is conclusive and unreviewable in the absence of fraud and so long as his decision is based upon evidence, substantial evidence. Those cases hold precisely that.

That is the basis for our defense to the plaintiffs' contention.

These cases were again affirmed very recently by the Court of Appeals for the 9th Circuit. The reason I mention that, although this action is brought in this Court and this Circuit of the District of Columbia, the land in question is located in Oregon, which is the 9th Circuit, and I would like to call Your Honor's attention to the case of C. A. Davis v. Neil Nelson, No. 18661, United States Court of Appeals for the 9th Circuit, reported March 13, 1964.

The COURT: Do you have the case here?

Mr. PITTLE: If I may, I would like to offer a mimeographed copy of the opinion, since it is not yet reported.

The COURT: You may hand it up.

(Mr. Pittle complied.)

Mr. PITTLE: Now as to the facts, if you care to hear them in detail I am prepared to give you a run-down.

The COURT: Yes, I want you to go into this and also as you go along I would be very glad if you will state the other side's contentions also.

Mr. PITTLE: I will attempt to do that.

There are two elements really involved. The pretrial order entered states the plaintiff's contentions, as approved by the Pretrial Judge, taken from his complaint——

The COURT: I want you to summarize it orally. I don't start reading anything until after I hear——

Mr. PITTLE: I am not asking Your Honor to read it. I am telling you it is in the record. This is where I find it.

The facts are these: that in 1957 the plaintiff applied

for patents to mining claims in Oregon for gold and silver. Here is the second element——

The COURT: Under what statute?

Mr. PITTLE: Under 30 U. S. Code, Section 22, the mineral claims for discovery. That statute provides that any citizen of the United States may enter the public lands for the purpose of exploring for mineral deposits.

The plaintiff entered under Section 22 of Title 30 for the purpose of exploring. He claims that he found a valuable mineral.

Section 23 of the same title, Title 30, provides also that you may get a patent or have a valid location only if you find a valuable mineral deposit.

The essential fact in this case and the fact to be emphasized is the word valuable. There are minerals in this location, there are gold and silver. They have been mined for years, but the findings and the evidence adduced before the Department of the Interior establish to the satisfaction of that Department, its Hearing Officer, the Director of the Bureau of Land Management and the Secretary, that these minerals were in veins but were in discontinuous veins.

Now relying upon the authority for deciding whether or not this constitutes a valuable location, the Secretary of the Interior, in affirming the decision, relied upon *Cristman against Miller*, a case by the Supreme Court, which holds specifically that just because there are valuable minerals there doesn't constitute a valuable discovery. In order for the discovery to be valuable under the meaning of the mineral laws it must be such a discovery as would justify a prudent man in undertaking additional expense and time to develop the location.

Now the plaintiff in his——

The COURT: In other words, the presence of a mineral is not enough, unless it is such as would make it worthwhile to spend money to mine, is that it?

Mr. PITTLE: That is correct. Spend money to mine it; that means develop it.

The plaintiff will not recognize the distinction between

development and exploration. The presence of the minerals may warrant further exploration, but according to Cristman against Miller, which is brought down to the present—

The COURT: What is the citation to that?

Mr. PITTLE: May I furnish that citation?

The COURT: Yes, indeed.

Mr. PITTLE: That decision, as I say, holds that the reasonable prudent man theory depends upon the value of the mineral to justify a prudent man in developing, and this is to be distinguished from exploring. The plaintiff doesn't seem to recognize the distinction between exploration and development. This is about what it comes to.

Now after the contests were filed under the Code of Federal Regulations promulgated pursuant to Title 30, Sections 22—

The COURT: Who filed the contest?

Mr. PITTLE: The Department of the Interior.

The plaintiff came in and filed an answer.

Then they had the hearing before the Hearing Examiner, who took the evidence. There were a large number of witnesses who testified.

The COURT: May I interrupt you? Give me again the citation to 30 U. S. Code.

Mr. PITTLE: Section 22 and Section 23.

The COURT: What does 23 have to do with this case?

Mr. PITTLE: I think as it has been amended it is reported in Miller—in Davis against Nelson, which I just handed to Your Honor. There is just one portion of it, just that portion in the middle of the paragraph: No location of the mining claim shall be made until discovery of the lode within the limits of the vein located. As interpreted by the decisions in the notations, the vein or lode must be as I have stated, a valuable discovery.

The COURT: No location . . . until discovery of the lode within the limits of the vein located. I see.

Mr. PITTLE: That has been determined to mean a valuable vein or lode.

The COURT: You may continue.

Mr. PITTLE: As I started to tell you about the proceedings before Interior, there were numerous witnesses who testified. The administrative record will contain the transcript of testimony before the Hearing Examiner consisting of several hundred pages of testimony of mining experts and there were numerous documentary exhibits consisting of over 100 assay reports which range in value from \$85 a ton down to \$14 a ton.

Now what we are contending is that just because you go out and locate and pick up one location and take a sample of ore and it assays \$85 a ton, this doesn't mean you have a valuable discovery because you may not find any more of that in the whole area.

The COURT: You mean the question is whether it would pay people, as a practical matter, to spend money to develop it?

Mr. PITTLE: That is correct. On the basis of all the evidence the Hearing Examiner concluded it would not. He heard the testimony of these witnesses of the plaintiffs and he heard the testimony of the Government's witnesses and he concluded that the assay reports and the testimony of the mining experts, that in his opinion it would not justify a prudent man in investing money to develop these locations. Therefore, he granted the Government's contest and denied the applications for patents.

Now that decision is the decision which was appealed to the Bureau of Land Management, the Director, who affirmed the Hearing Examiner's decision, and the plaintiff then appealed to the Secretary, exhausting his administrative remedy. The Secretary affirmed the decisions.

The plaintiff now comes to this Court and asks Your Honor, under the Administrative Procedures Act, to review the Secretary's decision.

The COURT: Has the plaintiff filed a brief or points and authorities?

Mr. PITTLE: You will find many briefs and many points and authorities. They are so numerous that I have not undertaken to analyze them.

The COURT: For the purposes of this trial has he done so?

Mr. PITTLE: Yes, he has, and they consist, if I may say so again, that in a previous proceeding both parties filed motions for summary judgment and both parties filed briefs in support of their motions for summary judgment.

The COURT: It seems to me that this matter should have been disposed of on motions for summary judgment because that is the way we handle all cases involving a review of an administrative record.

Mr. PITTLE: I agree. I filed a motion for summary judgment and so did the plaintiff, but Judge Curran, without giving a reason, denied both motions. We both told Judge Curran that there is no controverted issue as to any material fact.

The COURT: That is the usual practice we follow in administrative reviews whenever the hearing is on the administrative record.

Mr. PITTLE: I am entirely aware of it. I have done it myself, and I don't understand the reason for the denial, but that is the situation.

The COURT: I imagine it must have been a misunderstanding on the part of Judge Curran——

Mr. PITTLE: I will not speculate as to the reason.

The COURT: ——as to what the situation was.

Mr. PITTLE: I cannot do anything but conjecture. I just know this is what we have before us. He denied both motions.

The COURT: I don't want to be in a position of criticizing a colleague. I am sure he must have had a reason that he considered sufficient.

Mr. PITTLE: Nevertheless, with the motions for summary judgment both parties filed briefs on the law and the facts as established by the record before the Court. So in answer to Your Honor's question, we have the briefs in the record on the motions for summary judgment. In addition to that, the plaintiff has filed all kinds of briefs.

The COURT: I am interested in his brief on the motion for summary judgment. What is his contention?

Mr. PITTLE: His contention is primarily that the Hearing

Examiner and the proceedings before the Department of the Interior, the officers of that Department erred in not paying more weight, giving more weight to what he calls six credible witnesses who appeared in his behalf, who expressed their opinion that these were valuable mineral lodes and justified further development. That is the first factual contention.

The second contention on the law is—well, he also goes on with numerous individual findings, which would lead only to this ultimate conclusion: if you accept his contention on the facts, his witnesses should have been believed, the Government mining experts should not have been believed. That is the first contention on the facts.

As to the law, he contends that the fact that there was a mining patent issued to one claim, which is not now involved but which at one time was, and that was the sixth claim, that the fact that that patent issued because there was a valuable location on that claim should have been taken into consideration by the Secretary and given credit and effect as to these other five claims. But as I have pointed out, the record shows that the testimony limited to the locations within the boundaries of each claim did not in the opinion of the administrative agency support, in their opinion, the finding that a valuable mineral had been discovered.

I think that is about what it comes to on the plaintiffs' contention. When you get through reading the numerous contentions of assertions of error which he has asked the Court to review—

The COURT: It is always unfortunate from the Court's standpoint when a litigant appears pro se.

Mr. PITTLE: Now that raises the second element in the case, which I would like to explain to Your Honor in case you have some question about it when you review the record or if you review the brief. The plaintiff, Mr. Pruess, is a lawyer. He is listed in Martindale-Hubbell. He has been practicing law for 40 years. He also is executor for the estate of one of the other plaintiffs, who is deceased.

Now he filed this case pro se, as you have noted, and we filed a motion—this is the second element in the case, so you will see the posture in which the case is now before Your Honor. He filed a motion to proceed without regard to Local Rule 4, which requires, as you may know, counsel out of state associating a local attorney.

The COURT: We will waive that part of it.

Mr. PITTLE: Well, Judge Hart waived that part as to him alone, but would not permit him to represent the other—

The COURT: I will waive it as to all. I don't dispose of cases on technicalities.

Mr. PITTLE: This will clarify the question as to who is before Your Honor. Otherwise—

The COURT: They are all before me, all the plaintiffs and they all appear pro se. No, he appears in behalf of the others. Very well. And he is not here and he submits on the brief.

Mr. PITTLE: That is correct.

The COURT: Very well.

Mr. PITTLE: Now as far as I am concerned, that is about what it comes to.

The COURT: Then I suppose you want to offer the administrative record in evidence?

Mr. PITTLE: I would like to offer the administrative record in evidence as an exhibit, in accordance with our pretrial statement and the pretrial order.

The COURT: Let it be admitted.

The Deputy CLERK: Defendant's Exhibit No. 1.

The COURT: Is there anything else?

Mr. PITTLE: That is all, Your Honor.

The COURT: Judgment for the plaintiff. Plaintiff will submit proposed findings of fact and conclusions of law.

Mr. PITTLE: Judgment for the plaintiff?

The COURT: I mean judgment for the defendant. Counsel for the defendant will submit proposed findings of fact and conclusions of law.

The Court is indebted to counsel for a very clear presenta-

tion of the matter. I am sorry you had to wait all this time.

Mr. PITTLE: That is all right. May I at this time ask for the return of the administrative record so that you won't be bothered with it? It's gotten lost each time.

The COURT: Yes, we don't want to keep it here. You may return it to counsel, Mr. Clerk.

But submit your findings promptly within the next few days.

Mr. PITTLE: Yes, sir.

The COURT: They don't have to be too detailed. Don't submit any evidentiary findings, just ultimate findings.

Mr. PITTLE: Would you like a discussion of the evidentiary contentions?

The COURT: Yes, you might summarize it, but in forms of conclusions, without any argumentative material.

Mr. PITTLE: Thank you.

(The trial stood concluded.)

Certified as the official transcript of trial proceedings.

GERALD NEVITT,
Official Court Reporter.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT
OF COLUMBIA

Civil No. 1331-62

C. F. PRUESS, ET AL., PLAINTIFFS,

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR, DEFENDANT.

JUDGMENT

This case having come on for trial on the merits on May 5, 1964, and the Court having considered the evidence, consisting of the administrative record of proceedings before the Department of the Interior, and the argument of counsel, and having made findings of fact and conclusions of law, it is

ORDERED, ADJUDGED AND DECREED that judgment is hereby entered against the plaintiffs and in favor of the defendant and the complaint is dismissed.

Dated, this 12th day of May, 1964.

ALEXANDER HOLTZOFF,
Judge United States District Court.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT
OF COLUMBIA

Civil No. 1331-62

C. F. PRUESS, ET AL., PLAINTIFFS,

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR, DEFENDANT.

FINDING OF FACT AND CONCLUSIONS OF LAW

The Court having considered the evidence, consisting of the administrative record before the Department of the Interior, and having considered the argument of counsel, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The plaintiffs, citizens of the United States, brought this action against the defendant, Secretary of the Interior, under the Administrative Procedures Act, 5 U.S.C. 1009, to review a decision by the defendant, dated August 22, 1961, No. A-28641, which declared certain mining claims to be null and void.

2. Plaintiffs seek relief in the nature of mandamus and injunction and ask the Court to direct the defendant to recognize the validity of the mining claims.

3. On March 25, 1957, the plaintiffs filed an application for patent, No. Oregon 05396, to six lode mining claims in sections 25 and 26, Township 35 South, Range 5W, WM, near Grants Pass, Oregon. The claims are known as the Ida Group and consist of the Buckskin, Wildrose, Oregon, Big Mac, Little Mac and Big Rock.

4. In a notice of February 12, 1958, the United States contested the validity of the claims by filing the contest No. 213, entitled *United States of America v. C. F. Pruess, Sr., et al.*, in the Bureau of Land Management, pursuant to Title 43 C.F.R. Part 221, promulgated under the au-

thority of the mining laws of the United States, 30 U.S.C. 22, *et seq.*

5. In the complaint filed in the contest, the United States asserted, among other things, that minerals have not been found within the limits of the claims in sufficient quantities to constitute a valid discovery.

6. The plaintiffs, who were the contestees in Contest No. 213, denied the charges and a hearing was held before a Hearing Examiner of the Bureau of Land Management, Department of the Interior, at Grants Pass, Oregon, on October 1, 2, 20 and 21, 1959.

7. During the hearing many witnesses, including a number of mineral experts, testified on behalf of the United States and the plaintiffs. In addition, numerous documentary exhibits were admitted into evidence. Those exhibits include, among other things, about 100 assay reports.

8. On the basis of the testimony and the documentary exhibits, the Hearing Examiner, by decision of January 12, 1960, held that the land upon which the claims were located is mineral in character. However, he held that since a mining claim is not valid in the absence of a discovery of a *valuable* mineral deposit within its limits, and although the evidence was conflicting, a valuable mineral deposit within the meaning of the mining laws had not been discovered. The Examiner in his decision relied upon the rule in *Chrisman v. Miller*, 197 U.S. 313, that a discovery of a valuable mineral deposit means that minerals must be found of such a character that a person of ordinary prudence would be justified in further expenditure of labor and means, with a reasonable prospect of success, in developing a valuable mine.

9. The plaintiffs appealed from the decision of the Hearing Examiner and after a review of the extensive evidence submitted at the hearing, the Acting Director of the Bureau of Land Management affirmed the Examiner's decision. Thereafter, the plaintiffs appealed to the Secretary, seeking review of the Acting Director's decision.

10. By decision dated August 22, 1961, No. A-28641, the

Secretary affirmed the decision of the Acting Director of the Bureau of Land Management which affirmed the decision by the Hearing Examiner, holding the six lode mining claims to be null and void for the reasons stated in the opinions of the Hearing Examiner and the Acting Director.

11. In affirming the decisions holding the six lode mining claims to be null and void, the Secretary of the Interior carefully reviewed the entire record of the extensive evidence submitted at the hearing and noted that the principal evidence concerning minerals on the claims consisted of assay reports on a large number of samples of material from the claims and testimony of witnesses for the plaintiffs who testified that mineral deposits were exposed on the claims which in their opinion would justify further *prospecting and exploration*. Government mineral examiners, however, testified that a person of ordinary prudence would not be warranted in the further expenditure of time, effort and money to *develop* a paying mine on the contested claims. The Secretary noted further that the assay reports on approximately 100 samples showed that more than one-half of the samples contained only a trace of gold or no gold whatever.

12. In his answer to the plaintiffs' complaint, the defendant denied that a valid discovery of a valuable mineral deposit had been made on any of the claims and requested that the complaint be dismissed. After the answer was filed, both parties filed motions for summary judgment, together with their respective memoranda of points and authorities in support. The plaintiffs contended that the Secretary erred in disregarding evidence of their witnesses as to the discovery of valuable mineral deposits and that as a matter of law the defendant should have considered the existence of another mining location for which a patent issued, that is, Black Jack, contiguous to the six claims in question. In support of his motion for summary judgment, the defendant contended that the determination by him or his predecessor that the plaintiffs did not make valid mining locations, in the absence of fraud, is conclusive when supported by substantial evidence and that in this case the

administrative record of the proceedings before the Department of the Interior contained substantial evidence to support the determination.

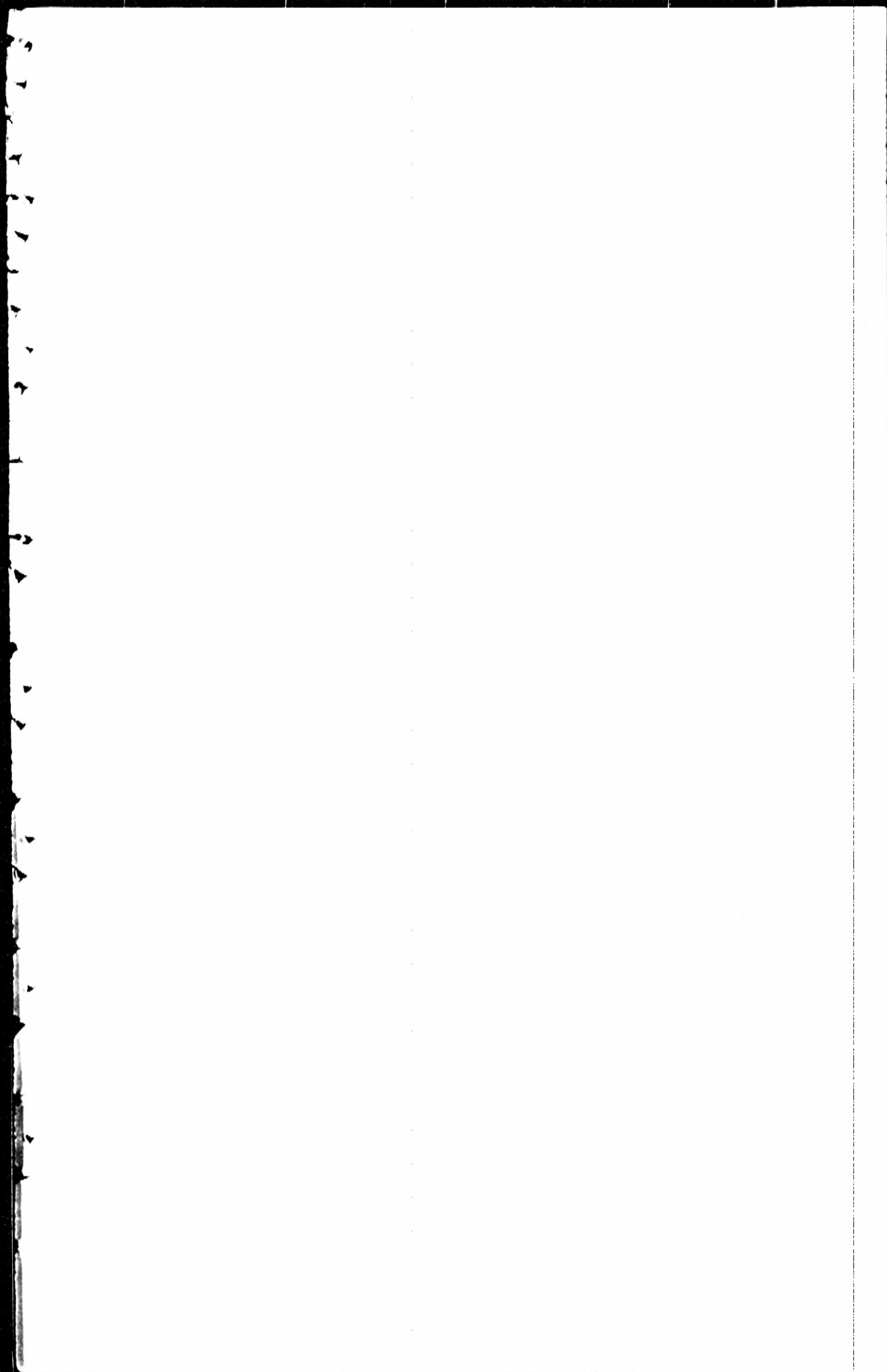
13. Both plaintiffs' and defendant's motions for summary judgment were overruled and at the trial on May 5, 1964, the entire administrative record of the proceedings before the Department of the Interior was introduced in evidence.

CONCLUSIONS OF LAW

On the basis of the foregoing facts and after a consideration of the administrative record, the Court concludes as a matter of law that the determination by the Secretary of the Interior that minerals have not been found within the limits of the plaintiff's claims in sufficient quantities to constitute a valid discovery is based upon substantial evidence and is conclusive.

Accordingly, the plaintiffs are not entitled to recover and the complaint is dismissed.

(s) ALEXANDER HOLTZOFF,
Judge, United States District Court.



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CONCLUSIONS OF LAW

On the basis of the foregoing facts and after a consideration of the administrative record, the Court concludes as a matter of law that the determination by the Secretary of the Interior that minerals have not been found within the limits of the plaintiff's claims in sufficient quantities to constitute a valid discovery is based upon substantial evidence and is conclusive.

Accordingly, the plaintiffs are not entitled to recover and the complaint is dismissed.

(s) ALEXANDER HOLTZOFF,
Judge, United States District Court.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil No. 1331-62

C. F. PRUESS, SR., ET AL., PLAINTIFFS,

vs.

STEWART L. UDALL, SECRETARY OF THE INTERIOR, DEFENDANT.

MOTION FOR ORDER OF EXTENSION OF TIME

Plaintiff respectfully moves for an order to extend the time within which to file a motion for reconsideration or new trial on the ground and for the following reasons:

The Assignment Commissioner set the case for trial as for May 6, 1964: Plaintiff is proper person plaintiff and upon a showing of inability to appear personally at the trial, an order was made excusing plaintiff's personal appearance: That plaintiff filed his proposed findings of fact and conclusions of law about May 14, 1964: That on May 19, 1964 plaintiff received the following post card notice from Harry M. Hull, Clerk, advising—"There was entered on the docket 5/12/64 an order dismissing complaint, findings of fact and conclusions of law." This hardly was possible because the order appears to have been made prior to the filing of the findings of fact and conclusions of law.

Moreover, plaintiff is unable to proceed for the reason he does not know the reasons and conclusion for an order of dismissal of plaintiff's complaint: No copy of the order or any opinion of the Court based upon the trial proceedings, was received by plaintiff.

/s/ C. F. PRUESS, SR.,
Proper person plaintiff,
1010 NW A Street,
Grants Pass, Oregon.